

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

RACHEL TYLER,)	
)	
Plaintiff,)	4:07CV3132
)	
v.)	
)	
DEBRA F. NIGHTENGALE,)	MEMORANDUM OPINION
)	
Defendant.)	
)	

This matter is before the Court on defendant Debra F. Nightengale's motion for attorney fees and expenses ([Filing No. 27](#)). In its June 24, 2008, memorandum and order, the Court permitted plaintiff to apply for the reasonable expenses and attorney's fees caused by plaintiff's failure to attend her deposition, in accordance with [Federal Rule of Civil Procedure 37\(d\) \(1\) \(A\) \(i\)](#) ([Filing No. 26](#) at CM/ECF pp. 3-5). Defendant has now done so. In support of her motion, defendant filed an Index of Evidence ([Filing No. 28](#)).

Defendant seeks \$711.80, which consists of attorney time spent traveling to and from the deposition site, attorney time spent creating a record of plaintiff's failure to appear, court reporter fees, and mileage for traveling to and from the deposition site ([Filing Nos. 27, 28-2, Attach. 1, 28-3, Attach. 2, 28-4, Attach. 3, and 28-5, Attach. 4](#)). Defendant *does not* seek attorney fees or expenses for "time spent by legal assistants in scheduling [Plaintiff's] deposition or making

arrangements with the clerk of court for a place in which to hold the deposition . . . for the time spent preparing for [Plaintiff's] deposition, filing the underlying Motion [to Dismiss] or this Application." ([Filing No. 27](#) at CM/ECF p. 2.) The Court finds that the requested fees and expenses are reasonable. Plaintiff has not objected or filed any other response to the motion. For these reasons, and for the reasons set forth in the Court's June 24, 2008, memorandum and order, plaintiff's motion will be granted.

In addition, in its June 24, 2008, memorandum and order, the Court noted that "there is reason to believe that plaintiff is not prosecuting (and does not intend to prosecute) this action diligently." ([Filing No. 26](#) at CM/ECF p. 6.) Plaintiff was given until July 3, 2008, to show cause why this matter should not be dismissed for failure to prosecute diligently. (*Id.*) Plaintiff has not submitted any response to the Court's memorandum and order. This matter will be dismissed without prejudice for failure to prosecute diligently. A separate order will be entered in accordance with this memorandum opinion.

DATED this 25th day of August, 2008.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court